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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

[redacted]

FILE: SRC 02 041 54049 Office: TEXAS SERVICE CENTER Date: OCT 23 2003

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides seaplane pilot instruction. It seeks classification of the beneficiary as a pilot-seaplane ratings multi-engine airline transport pilot, for a period of two years. The director determined that the training consists primarily of on-the-job training. In addition, the director found that the training program deals in generalities with no fixed schedule, objectives or means of evaluation. Finally, the director found that the beneficiary already had substantial training and expertise in the proposed field of training.

On appeal, counsel submits a brief stating that the director erred in her decision. Counsel states that the training is not primarily on-the-job training, and that the program does have a fixed schedule, objectives and means of evaluation. In addition, counsel asserts that the beneficiary does not possess substantial training and expertise in this field.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

> (ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: a copy of the beneficiary's visa and passport; the IAP-66 approving the beneficiary's J-1 status for a period of two years; a temporary airman certificate; a statement from the petitioner, with a narrative description of the training; promotional and business documents of the petitioner; photographs of the training facilities; and information indicating that this type of training is unavailable in the beneficiary's home country.

The director determined that the training program is primarily on-the-job training and, as such, cannot be approved. The petitioner submitted information stating that the beneficiary would need to have 1500 hours of total flight time, of which 500 hours are cross-country flight time, to acquire the license that is the goal of the training. The beneficiary currently has 750 total hours of flight time, and 100 hours of cross-country flight time. The petitioner states that the beneficiary would spend approximately 20 hours per week in on-the-job training to acquire the remaining hours. The petitioner asserts that the beneficiary must work as a flight instructor to gain these flight hours and the experience of flying a seaplane professionally. The nature of training to become a pilot mandates that an individual be involved in something that could be described as on-the-job training. The government requires a certain number of actual flight hours in order to be licensed and one method of acquiring those hours is to work as a flight instructor. While an excessive amount of on-the-job training may be a reason to deny a petition, in this instance, it is clear that the time in on-the-job training is justified. The director's remarks on this issue are withdrawn.

The second reason given for denying the petition is that the training does not have a fixed schedule, objectives or means of

evaluation. Counsel and the petitioner submitted a list of 13 areas of aeronautical knowledge and nine areas of flight proficiency that would be taught to the beneficiary. There is then a narrative breakdown of the training program:

> Aeronautical knowledge . . . will be a program that will progress, from study and classwork, during the first 8 months of the program of training. . . . Flight proficiency will be the second 8 months of training. It will take place in the planes, and also will be conducted via bookwork and classroom work. . . . The third period will begin together with the flight proficiency phase, and will be divided between the various types of flight [cross-country, night flight, instrument flight]. . . . The above will be accomplished by a mixture of classroom work (full time) during the practical knowledge and flight proficiency phases, with evening and instrument flying taking place at night during the flight proficiency phase. The last 8 months of the experience/training phase will be done days, as weather permits, full time.

There is no further information provided as to how the study and classwork will be structured, nor how the flight proficiency segments will be structured. The petitioner responded to the director's request for evidence by stating that there are no "minimum hours of training to be performed in the classroom to get an ATP license," and then refers to the above-described training schedule. There is no requirement for a specific number of classroom hours in order to qualify for H-3 classification, but the regulations do forbid approving a program that "deals in generalities, with no fixed schedule." 8 C.F.R. § 214.2(h)(7)(iii)(A). In this case, the petitioner has not established that there is a fixed training schedule in place.

The final basis for the director's denial is that the beneficiary already possesses substantial knowledge and experience in the area of proposed training. The director stated that the beneficiary "has completed Aeronautical and Aviation Training and has received a Temporary Airmen [sic] Certificate and a Commercial Pilot license." The beneficiary has to have completed this training in order to advance to the higher level of training that is proposed. The director's comments on this matter are withdrawn.

Beyond the decision of the director, it appears that the petitioner should be considered a vocational school. The petitioner provides instruction in a school-like setting in

preparation for a specific career, without providing a degree. Because the petitioner is a vocational institution, the beneficiary is not eligible for H-3 classification. The regulations state, "An H-3 classification applies to an alien who is coming temporarily to the United States: (1) As a trainee, other than to receive graduate medical education or training, *or training provided primarily at or by an academic or vocational* institution." 8 C.F.R. § 214.2(h)(1)(ii)(E)(1) (Emphasis added).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.